

APPEAL NO. 030571  
FILED APRIL 21, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 13, 2003. The hearing officer decided that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 9th and 10th quarters. The appellant (carrier) appeals and the claimant responds, urging affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant is entitled to 9th and 10th quarter SIBs. Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) provide the statutory and regulatory requirements for entitlement to SIBs. The hearing officer determined that the claimant made the requisite good faith effort to obtain employment commensurate with her ability to work. Rule 130.102(d)(4) provides that the statutory good faith requirement may be met if the employee:

- (4) has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work[.]

At issue here is whether other records show that the injured employee is able to return to work. The hearing officer determined that the functional capacity evaluation report (FCE), showing some ability to work, was not credible because it "does not indicate whether the evaluator took into consideration the claimant's loosened hardware and need for surgery to correct the problem." In cases where a total inability to work is asserted and there are other records which on their face appear to show an ability to work, the hearing officer is not at liberty to simply reject the records as not credible without explanation or support in the record. Texas Workers' Compensation Commission Appeal No. 020041-s, decided February 28, 2002. However, "[t]he mere existence of a medical report stating the claimant had an ability to work alone does not mandate that a hearing officer find that other records showed an ability to work. The hearing officer still may look at the evidence and determine that it failed to show this." Texas Workers' Compensation Commission Appeal No. 000302, decided March 27, 2000. The hearing officer explained why she did not find the FCE credible.

In view of the evidence presented, we cannot conclude that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201.**

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Roy L. Warren  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge